



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
SRC 03 196 51562

Office: TEXAS SERVICE CENTER Date: **SEP 27 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner operates an ethnic vegetable farming business. It seeks to employ the beneficiary permanently in the United States as a supervisor, vegetable farming. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition accordingly.

On appeal, the counsel submits no additional evidence but he does submit a brief in the matter.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

8 CFR § 204.5(i)(3)(ii) states, in pertinent part:

(A) General. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) Skilled workers. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on March 15, 2000. The proffered wage as stated on the Form ETA 750 is \$35,000 per year. The Form ETA 750 states that the position requires four years experience.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, and, copies of documentation concerning the beneficiary's qualifications as well as other documentation.

The issue to be discussed in this case is whether or not the petitioner had established that the beneficiary has the requisite experience as stated on the labor certification petition. The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa. Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the

labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of supervisor, vegetable farming.

In the instant case, item 14 describes the requirements of the proffered position as follows:

- |     |                         |                               |
|-----|-------------------------|-------------------------------|
| 14. | Education               |                               |
|     | Grade School            | Blank                         |
|     | High School             | Blank                         |
|     | College                 | No specific academic required |
|     | College Degree Required | Blank                         |
|     | Major Field of Study    | Blank                         |
|     | Training                | Blank                         |
|     | Experience              |                               |
|     | Training                |                               |
|     | Years                   | Four Years                    |

The beneficiary set forth his work experience on Form ETA-750B, and he signed and dated the form on February 11, 2000 under a declaration that the contents of the form were true and correct under the penalty of perjury.

In the instant case, the Application for Alien Employment Certification, Form ETA-750B, item 15 (b), sets forth work experience that the beneficiary listed for the position.

15. WORK EXPERIENCE

a. NAME AND ADDRESS OF EMPLOYER

Not employed

NAME OF JOB

Not applicable

DATE STARTED

Month - Sept Year - 1999

DATE LEFT

Month - Present

KIND OF BUSINESS

Not applicable

DESCRIBE IN DETAIL DUTIES...

Not applicable

- b. NAME AND ADDRESS OF EMPLOYER  
Rajendrasinh Raolji [the petitioner]  
NAME OF JOB  
Supervisor, Vegetable farming  
DATE STARTED  
Month - Jan Year - 1998  
DATE LEFT  
Month - Sept Year 1999  
KIND OF BUSINESS  
Ethnic Vegetable Farming  
DESCRIBE IN DETAIL DUTIES...  
[Same description as in ETA 750, Part A, Section 13]  
NO. OF HOURS PER WEEK  
40

There was no other vegetable farming job experience listed on the certified Form ETA 750B for the beneficiary although the beneficiary attempted to introduce other farming experience into the record asserting it was part of the original certified Alien Employment Application.<sup>1</sup>

Also, the petitioner has submitted a copy of a letter from 'Bharoda Gram Panchayat' dated January 1, 1998, that states the beneficiary was an "exclusive farmer" on 22 acres of land in India, and that "... He has been growing green vegetables such as Tindola, Parval, Methi, Kantola, Popdibean, Valorbeans, Egg Plants ETC. Since 1978 to 1990."

According to the Form G-325 prepared and signed by the beneficiary on December 3, 1994, found in the record of proceedings, the beneficiary listed himself unemployed from September 1994 to that date, i.e. December 8, 1994. Before that date the only other employment listing is "self-employed (store) India from 1989 through September 1994". There is no similar statement of farming experience for the 12-year period mentioned above found in the Form G-325.

The problem that arises in this case is the multiple inconsistencies and omissions in documents and information provided by the petitioner and beneficiary. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Matter of Ho*, 19 I&N Dec. at 591-592 also states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." The record of proceedings does not establish that the beneficiary has four years of experience.

Even if the record of proceeding did not contain multiple inconsistencies, the AAO concurs with the director's ultimate determination (but for a different reason) that no probative evidence establishes that the beneficiary

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<sup>1</sup> There is no dispute the supplemental page containing additional experience was not present in the certified alien employment application original as certified by the U.S. Department of Labor (USDOL). However, counsel asserts that the additional page was submitted to the USDOL but it was not part of the certified Alien Employment Application certified by that agency. Beneficiary does list an unrelated occupation, "sales assistant" where he stated he worked for a building products company in Georgia from January 1996 through January 1998.

has four years of experience as a vegetable-farming supervisor. There is no information in the certified Alien Employment Certification contained in the record of proceeding that establishes that the beneficiary was employed for four years in an employment capacity with duties of the proffered position. It is questionable whether the beneficiary's claimed prior work experience, as an "exclusive farmer" without any other detail or explanation would be appropriate for a supervisor's position in the petitioner's commercial operation in the United States. Again, the record made by petitioner is insufficient to prove the beneficiaries qualifications.

Counsel asserts without proof that the missing occupational experience was or was not submitted with the Alien Employment Application.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

If the immigrant petition was submitted with the certified Alien Employment Application and it was missing an original page, the petition must be rejected, as it was incomplete on filing without a full original certified Alien Employment Application. If the certified Alien Employment Application was submitted complete as certified and as received by CIS, the petition is invalid upon its face for the reasons stated above and it must be rejected. For either eventuality, the AAO is bound by the contents of the original certification submitted by petitioner as found in the record of proceedings, which does not contain the necessary four years of work experience for the stated occupation.

The evidence submitted does not demonstrate credibly that the beneficiary had the requisite four years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.